**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.R.No. 3629 of 2006**
**Date of decision : 31.10.2006.**

Madan Mohan

.....Petitioner.

Versus

Hari Krishan & Ors.

.....Respondents.

**CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present : Mr. A. K. Khunger ,Advocate
for the petitioner.

Mr. Harbhagwan Singh, Sr. Advocate
with Mr. J.P. Bhatt, Advocate
for respondent No.1.

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**VINOD K. SHARMA,J.( ORAL )**

The present revision petition has been filed against the order dated 15.5.2006 passed by the learned Civil Judge ( Jr. Divn.), Abohar vide which the application moved by the petitioner for setting aside the ex parte proceedings dated 19.12.2003 has been dismissed.

The petitioner herein was arrayed as defendant No.1, who was served through his son Shashi Kant Ahuja. The case set up by the petitioner was that as he was residing separately, therefore, there was no service on him. It was also pleaded that the suit was at the initial stage and, therefore, no injustice would be done to the respondents in case the petitioner is allowed to contest the suit on merit.

The learned trial Court has held that subsequent to the service on the son two sale deeds were executed in which the address of the

petitioner was shown to be that of his son and, therefore, a presumption was drawn that he was served and rightly proceeded ex parte. It is also held by the learned trial Court that as there were number of defendants, an attempt was made to prolong the proceedings unnecessarily.

The learned counsel for the petitioner contends that once the Court has come to the conclusion that the case is at an initial stage and, therefore, he should have been allowed to contest the same as the procedural law is made for advancement of justice and not to subvert the same.

Mr. Harbhagwan Singh, Sr. Advocate appearing on behalf of respondent No.1 has contested the revision petition. He has raised a preliminary objection by relying upon the judgment of the Hon'ble Supreme Court in the case ***M/s India Pipe Fitting Co. Vs. Fakruddin M.A.Baker and another AIR 1978 Supreme Court 45*** to contend that power under Article 227 being one of judicial superintendence, cannot be used to upset conclusion of facts arrived at by the Court, even if the same is erroneous. He has further placed reliance on the judgment of the Hon'ble Supreme Court reported in ***Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte and another AIR 1975 Supreme Court 1297***, which is to the similar effect that power under Article 227 of the Constitution of india has to be exercised most sparingly and only in appropriate cases and even error of fact can be corrected. The laid down by the Hon'ble Supreme Court is not applicable in the present case, as on admitted facts also the Court was bound to allow the application to contest the case on merit as the suit w as at initial stage.

I have considered the arguments of the respective counsel for the parties and find that in the present case, there was no need to upset the finding recorded by the learned Courts below, as it is admitted case that the

petitioner is alleged to have been served through his son and it is only on the basis of that that presumption has been drawn of service on the petitioner, therefore,he should have been allowed to contest the suit as the procedural law is made for advancement of justice and not to subvert the same. Once the Court has come to the conclusion that the proceedings were at initial stage, no prejudice would be caused to the plaintiff in case the petitioner was allowed to contest the suit on merit.

Accordingly, the revision is allowed, the impugned order is set aside. The application moved under Order 9 Rule 7 read with Section 151 C.P.C. for setting aside the exparte proceedings dated 19.12.2003 is allowed. However, this shall be subject to payment of Rs. 5000/- as costs.

October 31,2006 **( VINOD K. SHARMA )**
'sp' **JUDGE**